IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 503 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAYURIKA B BHAVSAR

Versus

GUJARAT STATE POULTRY FARMERS'CO.OPERATIVE FEDERATION LTD.

Appearance:

1. Special Civil Application No. 503 of 1991

MR JJ YAJNIK for Petitioner No. 1

MR KV GADHIA for Respondent No. 1

NOTICE SERVED for Respondent No. 2

RULE SERVED BY DS for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 01/04/2004

ORAL JUDGEMENT

#. This petition under Article 226 of the Constitution of India is made with a prayer to direct the respondents to treat the petitioner as having continued in service of

the respondent no. 1 and to regularise her services in the cadre of Clerk-cum-Typist from the initial date of entry into service, as also to issue an order restraining the respondents from terminating her services. Admittedly, the petitioner had approached this Court by Special Civil Application No. 7145 of 1989 with similar contentions and prayers and the same was disposed off on 5.10.90 upon a statement being made on behalf of the respondent concerned that, the representation to be made by the petitioner would be sympathetically considered. Pursuant to that order, the petitioner appears to have made a representation dated 11th October, 1990, upon which a decision appears to have been taken and communicated to the petitioner by letter dated 10.11.90. The petitioner has clearly stated in her representation dated 11.10.90 that, "the aforesaid petition was filed for regularising her services in the Federation and for re-employment."

#. In the aforesaid circumstances, it is clear that the present petition is a second attempt at obtaining the same relief after re-employment being denied on the ground of bad economic condition of the respondent-employer. It is submitted on behalf of the respondent no.1 - employer that, their establishment was actually closed in the year 1990 and the employer Federation went into liquidation in the year 1994 due to which, the Liquidator has also come to be joined as party respondent no. 3 herein.

#. Despite the above facts and circumstances, the learned counsel Mr. J.J. Yagnik vehemently argued that, although the period of probation started with the initial appointment of the petitioner was not further extended after 1.1.88, she had, in fact, continued to be employed by and regularly attended the work under, the same employer even as the other similar employees were continued and confirmed in service by the respondent. No cogent evidence in support of the contention of continued employment under the respondent is placed on record, but the contentions of termination of the petitioner's service in violation of the provisions of Sections 25F, 25G and 25H of the Industrial Disputes Act, 1947 are raised. As against that, the learned counsel for the respondent Mr. Gadhiya submitted that, the petition was not maintainable in view of the earlier order of this Court and the decision taken upon the representation made by the petitioner. The factual contentions of the petition were also orally denied by the learned counsel for the respondent and in any case, operation and establishment of the respondent-employer having been

admittedly closed since more than a decade, no relief could be granted, according to the submission of Mr. Gadhiya.

#. It is clear from the above discussion that the petitioner has based her claim on violation of the provisions of the Industrial Disputes Act, 1947 without raising an industrial dispute, and has approached this Court directly for the second time for the same relief. Besides that, there being questions of disputed facts, no relief can be granted in exercise of the powers of this Court under Article 226 of the Constitution. The petition is, therefore, rejected and Rule is discharged with no order as to costs.

[D.H. WAGHELA, J.]
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